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Proposed Counsel for Debtors and  
Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

In re:

BEVERLY COMMUNITY HOSPITAL  
ASSOCIATION, dba BEVERLY HOSPITAL  
(A NONPROFIT PUBLIC BENEFIT  
CORPORATION), *et al.*<sup>1</sup>

Debtors,

☒ Affects all Debtors

☐ Affects Beverly Community  
Hospital Association

☐ Montebello Community Health  
Services, Inc.

☐ Beverly Hospital Foundation

Lead Case No.: 2:23-bk-12359-SK

Jointly administered with:

Case No: 2:23-bk-12360-SK

Case No: 2:23-bk-12361-SK

Chapter 11 Case

**DEBTORS' OPPOSITION TO DR. IHSAN  
SHAMAAN'S MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY UNDER  
11 U.S.C. §362; DECLARATION OF  
MARK LUEKEN IN SUPPORT  
THEREOF**

Date: May 3, 2023

Time: 8:30am

Judge: Sandra R. Klein

Place: Zoom.Gov – or - Courtroom 1575  
255 E. Temple St.  
Los Angeles, CA 90012

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Blvd., Montebello, California 90640.

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**I. SUMMARY**

Dr. Ihsan Shamaan (“Shamaan”) brings his motion for relief from the automatic stay [Docket No. 151] (the “Motion”) for the purpose of pursuing proceeds from Debtor Beverly Community Hospital Association’s (“Beverly” or the “Hospital”) insurance policies<sup>2</sup> in a state court action in the Superior Court of the State of California For the County of Los Angeles (Case No. 21STCV18015) filed by Shamaan against the Debtors (the “Lawsuit”).

Shamaan sought to have the Court hear the Motion on shortened notice because the Lawsuit was initially set to proceed to trial on April 21, 2023 but was stayed by the Debtors’ bankruptcy filing. Now Shamaan argues the Lawsuit must immediately proceed to trial. The timing of the trial, among other things, is the exact reason the motion should be denied.

Beverly and its affiliated debtors and debtors in possession in the above-captioned case (collectively, the “Debtors”) filed for bankruptcy protection on April 19, 2023 (the “Petition Date”). The Motion was filed just 8 days after the Petition Date. As this Court is aware, Beverly is in dire need of the protection the automatic stay provides so that it can pursue a going-concern sale that will keep the Hospital open for the community that greatly relies on its care. Time is truly of the essence here.

The relief requested in the Motion should be denied because forcing the Debtors’ senior management and employees to participate in a trial so soon after the Debtors’ bankruptcy filing unduly prejudices the Debtors’ sale efforts. The Debtors’ employees’ sole focus needs to be on maintaining high levels of patient care and preserving the Hospital for the benefit of a buyer. In addition, the insurance policy referenced in the Motion is property of the Debtors’ bankruptcy estate and likely will not cover the entirety of the potential damages and costs sought in the Lawsuit, thereby resulting in a potential claim against the Debtors’ bankruptcy estate. Proceeding to trial whether there is coverage or not will distract the Debtors and their employees at the most critical time in these cases. Even if insurance coverage was available to cover the

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<sup>2</sup> See Motion, 21:4-7.

entirety of Shamaan's claim, the automatic stay was specifically designed to protect the Debtors from the harm that proceeding to trial would cause.

Accordingly, the Debtors respectfully request that this Court deny the Motion and order that the automatic stay will remain in effect, thereby providing the Debtors with the breathing room they need at this extremely crucial and early stage of the case to work towards a successful sale of the Hospital.

This Opposition is based on the Declaration of Alice Cheng filed on April 19, 2023 [Docket No. 9] (the "Cheng Declaration"), the Declaration of Mark Lueken attached hereto, and the other pleadings and papers of record in the above-captioned case.

## **II. STATEMENT OF FACTS**

### **A. The Lawsuit and the Motion for Relief from Stay.**

Shamaan filed the Lawsuit against Beverly Community Hospital Association, Beverly Hospital Foundation, and Does 1 through 25 inclusive, on May 13, 2021. (*See* Motion, 20:3-4). In the Lawsuit, Shamaan claims that he was retaliated against by the Debtors' employees and suffered workplace harassment in recent years. (*See* Exhibit 1 to the Motion). Specifically, Shamaan alleges five separate causes of action: 1) Health and Safety Code §1278.5; 2) Retaliation In Violation of Labor Code §1102.5; 3) Intentional Interference with Prospective Economic Relations; 4) Retaliation in Violation of the FEHA; and 5) Failure to Prevent Harassment, Discrimination, or Retaliation in Violation of Govt. Code §12940(k) (such alleged causes of action (the "Plaintiff's Alleged Claims"). (*See* Exhibit 1 to the Motion). In respect of Plaintiff's Alleged Claims, Shamaan is seeking punitive and exemplary damages in addition to general and compensatory damages (Exhibit 1 to the Motion, 43:7-9). The Debtors filed their response to Shamaan's complaint on June 18, 2021.

As stated at the Debtors' first day hearing on April 21 2023, the success of the Debtors' Bankruptcy Case depends entirely on the Debtors' ability to keep the Hospital open for the benefit of the community and run a successful going-concern sale process.

The Motion ignores the significant amount of time that Debtors' counsel would have to spend immediately with the witnesses to prepare them for their testimony, during which time

they would be unable to perform their everyday duties at the Debtors' facilities. Careful preparation of these witnesses, especially Ms. Cheng, and examination of them by the Debtors' attorneys is necessary because their testimony is anticipated to constitute the majority of Shamaan's case and the Debtors' defense. Second, the Motion ignores that Shamaan has also subpoenaed senior employees of the Debtors' employees to testify. Finally, the Motion states that the trial could last for over two weeks. (Motion, 20:17). When the first few months of a chapter 11 case are as critical as they are in this instance with the need to sell the hospital paramount, there is no appropriate time for any of the Debtors' employees to turn their efforts from the needs of the hospital to the trial. The Debtors need all hands on deck for the benefit of these chapter 11 cases and the sale process. Every moment spent by these employees on the Lawsuit is time they cannot spend on the Debtors' restructuring efforts.

**B. Availability of Insurance Coverage.**

The Debtors are insured under a Healthcare Entity Integrated Liability Policy with California Healthcare Company, Inc. (the "Insurance Policy"), that was attached as Exhibit 2 to the Motion. The Insurance Policy has an aggregate liability limit of \$5 million but does not cover punitive or exemplary damages, both of which Shamaan seeks in his Lawsuit (*see* Exhibit 1 to the Motion). Therefore, it is not clear insurance coverage is fully available for potential damages from Plaintiff's Alleged Claims. The Insurance Policy is also a "wasting" policy so that the fees and costs paid to defend the action reduce the aggregate liability limit. Thus, the cost of defending the Lawsuit, would all be drawn against the aggregate amount of the Insurance Policy. The facts recited in Shamaan's Motion thus severely underestimate the prejudice to the Debtors, and to the estate generally, of going forward with the Lawsuit.

**C. The Debtors' Reorganization Efforts.**

As set forth in the Cheng Declaration, the Debtors' reorganization efforts are extremely time-sensitive and short-fused. With a very limited cash position, time is of the absolute essence.

The Debtors' reorganization efforts in this bankruptcy case include retaining Portage Point Partners, LLC ("Portage Point") to market and sell the Debtors' assets as a going concern and obtaining debtor-in-possession financing to operate the Hospital and maintain the Debtors'

1 going concern value during the sale process. The debtor-in-possession financing was approved  
2 by the Court on April 21, 2023 (the “DIP Financing”), pending submission of an agreed order  
3 between the Debtors, HRE Montebello, LLC (the “DIP Lender”), and US Bank, National  
4 Association, the Master Trustee under that certain Master Trust Indenture (as defined in the  
5 Cheng Declaration), for certain revenue bonds issued by the California Statewide Communities  
6 Development Authority. A final hearing on the DIP Financing is currently set for May 17, 2023,  
7 and the Debtors continue to work with the DIP Lender to finalize the terms of an agreed final  
8 order ahead of the May 17, 2023 hearing.

9 Even with the DIP Financing, the Debtors have only a few months, at best, in which to  
10 effectuate a going concern sale. As demonstrated by the budget attached to the interim DIP  
11 financing order filed with the Debtors’ DIP motion [Docket No. 31], the DIP Financing may  
12 only enable the Debtors to maintain operating through June 18, 2023. It is critical that the  
13 Debtors and Portage Point accomplish a sale of the Debtors’ assets while the Debtors are still  
14 operating to maximize value.

15 Beverly and its employees have been working tirelessly with Portage Point in marketing  
16 the Hospital and the Debtors’ other assets. As detailed in the Cheng Declaration, the sale process  
17 has been ongoing since before the Petition Date and continues now post-petition in earnest. This  
18 process of working with buyers and also running the Debtors’ critical hospital operations will  
19 continue to be very intense for the next two months as the Debtors try to negotiate and document  
20 a sale, and provide patient care at its highest level.

21 The Hospital cannot run without the full attention of the Debtors’ employees. Shamaan  
22 seeks to have Alice Cheng, among other members of senior management, testify in the Lawsuit.  
23 As the chief executive officer and leader of the Hospital, Ms. Cheng is critical to both the  
24 Debtors’ hospital operations and the ongoing sale process. In addition, Shamaan having other  
25 witnesses testify during the ongoing sale process will cause meaningful distraction and business  
26 disruption. The Debtors simply do not have the personnel capacity to lose employees for any  
27 non-emergency reasons during the next few months.



1 The facts recited in Shamaan's Motion thus severely underestimate the prejudice to the  
2 Debtor, and to the estate generally, of going forward with the Lawsuit. The Motion should be  
3 denied.

### 4 **III. ARGUMENT**

#### 5 **A. The Automatic Stay Applies to Shamaan's Lawsuit.**

6 It is undisputed that the automatic stay of Bankruptcy Code Section 362(a) applies to  
7 Shamaan's Lawsuit. (*See* Motion, 20:3). Even if it was in dispute, the Insurance Policy is  
8 property of the estate,<sup>3</sup> and Shamaan clearly intends to pursue proceeds of the Insurance Policy if  
9 he prevails in the Lawsuit (*See* Motion, 3, ¶4), thereby seeking recovery against an asset of the  
10 estate. In other words, the Lawsuit is stayed by Bankruptcy Code Section 362(a)(3), which stays  
11 "any act to obtain possession of property of the estate or of property from the estate or to  
12 exercise control over property of the estate."

#### 13 **B. The Factors to Be Considered in Granting Stay Relief.**

14 The automatic stay provision is one of the fundamental debtors protections provided by  
15 bankruptcy laws and plays a vital role in any bankruptcy case. *See, In re Baleine, LP*, 2015 WL  
16 5979948, at \*6 (C.D. Cal. 2015) (quoting *In re Landmark Fence Co.*, No. CV 11-00934 AHM,  
17 2011 WL 6826253, at \*3 (C.D. Cal. Dec. 9, 2011). The court in *In re Curtis*, 40 B.R. 795  
18 (Bankr. D. Utah 1984) announced twelve nonexclusive factors to be considered when ruling on a  
19 stay relief motion seeking the court's permission to continue with pending litigation against a  
20 debtor in another forum. Courts in this district have adopted the *Curtis* factors and apply them in  
21 ruling on stay relief motions such as that brought by Shamaan in the instant case. *See, e.g., In re*  
22 *Plumberex Specialty Products, Inc.*, 311 B.R. 551, 559 (Bankr. C.D. Cal. 2004); *In re Roger*, 539  
23 B.R. 837, 844-45 (C.D. Cal. 2015); *In re Baleine, LP*, 2015 WL 5979948, at \*7 (C.D. Cal.  
24 2015); *In re Badax, LLC*, 608 B.R. 730, 738-39 (Bankr. C.D. Cal. 2019). Moreover, the Ninth

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26 <sup>3</sup> 11 U.S.C. § 541(a); *In re Minoco Group of Cos.*, 799 F.2d 517, 519 (9th Cir. 1986) ("Under the weight of  
27 authority, insurance contracts have been said to be embraced in this statutory definition of "property.") (quoting *In*  
28 *re Davis*, 730 F.2d 176, 184 (5th Cir. 1984)); *In re Vitek, Inc.*, 51 F.3d 530, 534 (5th Cir. 1995) ("virtually every  
court to have considered the issue has concluded that the [liability insurance] policies -- -- and clearly the proceeds  
of those policies -- -- are part of debtor's bankruptcy estate").

Circuit B.A.P. has held that “the Curtis factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum.” *In re Advanced Med. Spa Inc.*, 2016 WL 6958130, at \*3 (B.A.P. 9th Cir. 2016) (quoting *Kronemyer v. Am. Contractors Indemn. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009)).

Those twelve factors are (1) resolution of the issues, (2) lack of connection with the bankruptcy case, (3) debtor as a fiduciary, (4) another forum better suited to determination of the issue, (5) costs borne by the insurance carrier, (6) third party liability, (7) interests of other creditors, (8) equitable subordination, (9) avoidable lien, (10) progress of the state court action, (11) judicial economy, and (12) the balance of hurt. *See, Plumberex*, 311 B.R. at 559-60 (citing *Curtis*, 40 B.R. at 799-800). These factors have been adopted by courts in this district, and others. *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990); *In re Plumberex Specialty Products, Inc.*, 311 B.R. 551 (Bankr. C.D. Cal. 2004). Not all of the twelve factors are relevant in every case, and a court is not required to give equal weight to each factor. *Plumberex*, 311 B.R. at 560. Because not all twelve factors are relevant in every case, the Ninth Circuit B.A.P. has further held that determining whether to lift the stay to permit prepetition state court litigation to proceed does not require express consideration of each of the Curtis factors. *See In re Merriman*, 616 B.R. 381, 389 (B.A.P. 9th Cir. 2020); *see also Kronemyer*, 405 B.R. at 921-22. In this case, 3 factors predominate, all of which militate in favor of denying Shamaan’s Motion.

**C. The Lawsuit Would Interfere With This Bankruptcy Case.**

The primary *Curtis* factor relevant here is the second one: “The lack of any connection with or interference with the bankruptcy case.” *Curtis*, 40 B.R. at 800. Here, permitting the Lawsuit to proceed to trial would significantly interfere with the Debtors’ ongoing reorganization efforts. Indeed, as the court stated in *Curtis*, “[t]he most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor...is the effect of such litigation on the administration of the estate.” *Id.* at 806. The Debtors only have sufficient financing from the DIP Lender to operate through the next few months, at best. In order to

1 obtain full going concern value, the Debtors, and their employees, must focus all their efforts on  
2 the hospital operations and sale process. This is especially true in this case because of the  
3 heightened need for the Debtors' employees to assure the health and safety of every patient in the  
4 Hospital.

5 In order to complete a successful sale process, the Debtors will need the full attention of  
6 Ms. Cheng, who Shamaan seeks testimony from in the Lawsuit. [See Lueken Decl. ¶ 3].  
7 Shamaan also seeks the testimony of other employees, including the Administrative Director,  
8 Quality and Risk Management, Chief Financial Officer, and Head of Medical Records, among  
9 others, at a time when they are direly needed. [Lueken Decl. ¶ 3]. The Debtors cannot suffer the  
10 loss of these employees without also hampering the sale process and thereby, a loss of going  
11 concern value for their creditors.

12 It is the normal course of a bankruptcy case to first focus on maximizing the value of  
13 assets for all creditors and then to later focus on evaluating each creditor's claim. By the  
14 Motion, Shamaan seeks to interfere with the sale process and reduce the return to all creditors  
15 merely so that he may attempt to reduce his own purported claim to judgment at an earlier date.  
16 The Debtors' estate should not be so severely prejudiced as this early stage in the bankruptcy  
17 case (just two weeks after the bankruptcy filing) merely to confer such a small benefit to one  
18 single *potential* creditor. Instead, the stay should remain in place to give the Debtors the  
19 breathing room it needs to conduct a meaningful sale process.<sup>4</sup>

20 **D. The Estate Would Be Jeopardized Despite the Insurance Policy Because Said Policy**  
21 **Does Not Cover All Relief Sought in the Lawsuit.**

22 One of the *Curtis* factors is “[w]hether the debtor’s insurance carrier has assumed full  
23 financial responsibility for defending the litigation.” *Curtis*, 40 B.R. at 800. This factor does not  
24 support granting relief from stay. The *Curtis* case took this in part from *Matter of Holtkamp*, 669  
25 F.2d 505 (7th Cir. 1982), where the court stated that: “allowing the civil action to go forward did

26 <sup>4</sup> *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 755 (9th Cir. 1995), *citing* H.R.Rep. No. 595, 95th Cong., 1st  
27 Sess., at 340 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296-97 (explaining that the two purposes of the  
28 automatic stay are: (i) to give the debtor breathing space from its creditors to permit it “to attempt a repayment or  
reorganization plan”; (ii) prevent a race to the assets among the creditors.)

1 not jeopardize Holtkamp's bankrupt estate because his insurance company assumed full financial  
2 responsibility for defending that litigation." *Holtkamp* at 508-09. In this case, California  
3 Healthcare Insurance Company, Inc. issued a reservation of rights to the Debtors stating that  
4 while it would defend the Lawsuit, it reserved the right to continue investigating the claim and  
5 since certain of the damages sought are outside the scope of the Insurance Policy, the Debtors  
6 may be called upon to pay all or some portion of a judgment. [Lueken Decl. ¶ 8-9]. Even if the  
7 insurance company assumed full responsibility to defend the trial and cover any potential  
8 judgment, the estate would be severely jeopardized by the interference of the trial alone.

9 But critical to the analysis of this *Curtis* factor, the Debtors' insurance company has not  
10 assumed full responsibility for all potential relief in Shamaan's complaint, and the Insurance  
11 Policy is a "wasting" policy. This means that the coverage under the Insurance Policy for  
12 Plaintiff's Alleged Claims (if any) will be reduced by amounts paid to defend Shamaan's  
13 Lawsuit. The nature of a wasting policy is that once the coverage for a claim is used, it is no  
14 longer available. Furthermore, both the Insurance Policy and the proceeds of the Policy are  
15 property of the Debtors' bankruptcy estate.<sup>5</sup> This case is thus more like *In re Forty-Eight*  
16 *Insulations, Inc.*, 54 B.R. 905 (Bankr. N.D. Ill. 1985) (*criticized on unrelated point at 141 B.R.*  
17 *959*), where relief from stay was denied because allowing the suit to proceed would have  
18 "diminished the value of the estate greatly." *Id.* at 909.

19 As state above, the insurance company is defending the action under a *reservation of*  
20 *rights*, meaning that it reserves the right to refuse coverage. [Lueken Decl. ¶ 9]. If coverage is  
21 ultimately refused, the only thing the Motion would accomplish is liquidating Shamaan's claim  
22 while at the same time keeping key employees distracted with trial preparation and trial.

23 Consequently, Shamaan's Lawsuit could result in a significant judgment not covered by  
24 the Insurance Policy in three ways. First, the Lawsuit seeks punitive damages against the  
25 Debtors. Both the language of the Insurance Policy and applicable California law dictate that an  
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27 <sup>5</sup> 11 U.S.C. § 541(a); *In re Minoco Group of Cos.*, 799 F.2d 517, 519 (9th Cir. 1986); *In re Vitek, Inc.*, 51 F.3d 530,  
28 534 (5th Cir. 1995).

insurer cannot be liable for willful acts in general,<sup>6</sup> and California law is also clear that an insurer cannot be liable for punitive damages in particular.<sup>7</sup> Second, Shamaan's complaint alleges employment discrimination, which may be premised upon a finding that the Debtors intentionally discriminated against Shamaan. (*See* Exhibit 1 to the Motion). Such intentional discrimination requires a finding of willfulness.<sup>8</sup> Willful acts are uninsurable as a matter of law.<sup>9</sup> Third, the amount of damages are not limited to the amount of coverage provided by the Insurance Policy and may exceed that amount.<sup>10</sup>

**E. The Balance of the Hurt Favors the Denial of Shamaan's Motion.**

The twelfth *Curtis* factor, "[t]he impact of the stay on the parties and the 'balance of the hurt,'"<sup>11</sup> clearly favors denial of the relief from stay sought in Shamaan's Motion. As noted above, if the Lawsuit proceeded to trial immediately, the Debtors' efforts to effectuate a going concern sale would be seriously interfered with to the detriment of all of its creditors. Further, the estate would be jeopardized by a potentially significant claim against the estate arising out of the willful causes of action and punitive damages sought in Shamaan's complaint.

The Debtors are sympathetic to Shamaan's deteriorating health condition as stated in the Motion, but Shamaan has already had the opportunity to preserve his trial testimony in his deposition taken on August 2, 2022. As a result, whether trial occurs immediately or months from now, Shamaan will not be significantly prejudiced.

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<sup>6</sup> *See*, Cal. Ins. Code § 533.

<sup>7</sup> *PPG Industries, Inc. v. Transamerica Insurance Co.*, 20 Cal.4th 310, 319 (Cal. Ct. App. 1999.) ("an insured may not shift to its insurance company, and ultimately to the public, the payment of punitive damages awarded").

<sup>8</sup> *Areteaga v. Brink's, Inc.*, 163 Cal.App.4th 327, 342 (Cal. Ct. App. 2008); *see also*, *Mixon v. Fair Employment and Housing Commission*, 192 Cal.App.3d 1306, 1316-17 (Cal. Ct. App. 1987); *Memmer v. Marin County Courts*, 169 F.3d 630, 633 (9th Cir. 1999).

<sup>9</sup> Cal. Ins. Code § 533.

<sup>10</sup> The Insurance Policy has a liability limit of \$5 million. Shamaan is seeking punitive and exemplary damages in addition to compensatory damages. These alleged damages, fees and costs could exceed the remaining balance in the Insurance Policy.

<sup>11</sup> *Curtis*, 40 B.R. at 800.

**IV. CONCLUSION**

For the reasons stated above, the Debtors request that this Court DENY the Motion and allow the Debtors the breathing room necessary to succeed in their efforts to sell the Hospital as a going concern. Alternatively, at a minimum, the Court should postpone the relief requested in the Motion for at least three months from the Petition Date to allow the Debtors and their employees to focus their attention on maximizing the value of the estate for all creditors –not just one unsecured creditor.

Dated: May 1, 2023

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ Jennifer L. Nassiri  
Jennifer L. Nassiri

JUSTIN R. BERNBROCK  
JENNIFER L. NASSIRI  
CATHERINE JUN  
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ALEXANDRIA G. LATTNER

Proposed Counsel to Debtors and  
Debtors in Possession

**DECLARATION OF MARK LUEKEN**

I, Mark Lueken, submit this Declaration in support of the *Debtors' Opposition to Dr. Ihsan Shamaan's Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Opposition")<sup>12</sup>, and hereby state and declare as follows:

1. I am the Administrative Director, Quality and Risk Management for Debtor Beverly Community Hospital Association ("Hospital" or "Debtor"). I joined the Hospital in April 2019 and have been working in this role for approximately 4 years. I have a total of 16 years' experience in quality care and risk management of hospitals as I have served in similar roles for various other hospitals prior to joining Hospital, including USC Verdugo Hills Hospital, Glendale Memorial Hospital, and St Vincent Medical Center. As part of my role, I am familiar with the lawsuits filed against the Debtors, the Debtors' insurance policies, various of the Debtors' policies and procedures, and the Debtors' general finances.

2. I am generally familiar with the facts of the Shamaan Lawsuit against the Hospital initiated on May 13, 2021. I have been directly involved in the ongoing Lawsuit, including acting as the Debtors' point of contact with the insurance company and the Debtors' counsel in the Shamaan Lawsuit. In my role at the Hospital, I have firsthand knowledge of the insurance policies and facts of the Lawsuit.

3. A vast majority of the Lawsuit involves alleged conduct by Ms. Alice Cheng, the Debtors' chief executive officer. In addition to Ms. Cheng, Shamaan has issued subpoenas to several of the Debtors' employees to appear at trial and testify. Those employees include myself, George Holtz, Administrative Director, Human Resources; Houshang S. Abd, Senior Vice President of Finance and Chief Financial Officer, and Carol Messina, Head of Medical Records/ Supervisor, among others. The employees who are involved in the Lawsuit have devoted a significant amount of time assisting the Debtors' restructuring advisors with due

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<sup>12</sup> Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such term in the Opposition.

diligence requests to potential buyers and providing other general information necessary for the Chapter 11 case.

4. I understand that the trial in the Lawsuit could last for over two weeks.

5. The Debtors filed their initial answer to the Lawsuit on June 18, 2021.

6. Through counsel, the Debtors took Shamaan's deposition on August 2, 2022.

7. The Debtors are insured under a Healthcare Entity Integrated Liability Policy with California Healthcare Company, Inc. (the "Insurance Policy"), that was attached as Exhibit 2 to the Motion. The Insurance Policy has an aggregate liability limit of \$5 million, but does not cover punitive or exemplary damages, both of which Shamaan seeks in his Lawsuit.

8. The Insurance Policy is also a "wasting" policy so that the fees and costs paid to defend the action reduce the liability limit for the applicable claim. Thus, the cost of defending the Lawsuit, would be drawn against the amount of the Insurance Policy.

9. California Healthcare Company, Inc. has issued the Debtors a reservation of rights, stating that while it would defend the Lawsuit, it reserved the right to continue investigating the underlying claims.

*[Signature Page Follows]*



1 I declare under penalty of perjury that, to the best of my knowledge and after reasonable  
2 inquiry, the foregoing is true and correct.

3 Dated: May 1, 2023

4  
5 By:



Mark Lueken  
Administrative Director, Quality and Risk  
Management for Beverly Community Hospital  
Association

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
222 N Pacific Coast Highway, 3rd Floor, El Segundo, CA 90245.

A true and correct copy of the foregoing document entitled (*specify*): Debtor's Opposition to Third Party Dr. Ihsan Shamaan's Motion for Relief from the Automatic Stay Under 11 U.S.C. §362; Declaration of Mark Lueken in Support  
Thereof

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 05/01/2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See Exhibit A.

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) 05/01/2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

See Exhibit B.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 05/01/2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

See Exhibit C - Electronic Mail

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

05/01/2023      Jonathan J. Thomson  
*Date*                      *Printed Name*

/s/ Jonathan J. Thomson  
*Signature*

## **Exhibit A**

CreditorName	Email
Megan M Adeyemo	madeyemo@grsm.com, asoto@grsm.com
Joseph P Buchman	jbuchman@bwslaw.com, gmitchehl@bwslaw.com
Evelina Gentry	evelina.gentry@akerman.com, rob.diwa@akerman.com
Evan Gershbein	ECFpleadings@kccllc.com
Michael Jones	michael.jones4@usdoj.gov
Alexandria Lattner	alattner@sheppardmullin.com, ehwalters@sheppardmullin.com
Marc A Levinson	MALevinson@orrick.com, borozco@orrick.com
Ron Maroko	ron.maroko@usdoj.gov
Kelly L Morrison	kelly.l.morrison@usdoj.gov
Jennifer L Nassiri	JNassiri@sheppardmullin.com
Mary H Rose	mrose@buchalter.com
Nathan A Schultz	nschultzesq@gmail.com
Howard Steinberg	steinbergh@gtlaw.com, pearsallt@gtlaw.com;howard-steinberg-6096@ecf.pacerpro.com
United States Trustee (LA)	ustpreion16.la.ecf@usdoj.gov
Sharon Z. Weiss	sharon.weiss@bclplaw.com, raul.morales@bclplaw.com, REC_KM_ECF_SMO@bclplaw.com
Sharon Z. Weiss	sharon.weiss@bclplaw.com, raul.morales@bclplaw.com, REC_KM_ECF_SMO@bclplaw.com

## **Exhibit B**

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
TOP 30	Abbott Laboratories Inc	Nathan Scott	100 Abbot Park Road			Abbot Park	IL	60064
TOP 30	Advantis Medical Staffing	Elayne Goldmane	13155 Noel Road Suite 300			Dallas	TX	75240
Counsel for Advantis Medical Staffing	Akerman LLP	Evelina Gentry and Anthony D. Sbardellati	601 West Fifth Street, Suite 300			Los Angeles	CA	90071
TOP 30	Alhambra Hospital Medical Center	Terry Chu	4619 N. Rosemead Blvd.			Rosemead	CA	91770
Attorneys for California Statewide Communities Development Authority	Allen Matkins Leck Gamble Mallory & Natsis LLP	Debra A. Riley, Esq.	One America Plaza	600 West Broadway, 27th Floor		San Diego	CA	92101-0903
TOP 30	Allied Universal Security Services	Moises Rodriguez	161 Washington St Suite 600			Conshohocken	PA	19428
TOP 30	Arthrex, Inc	Carla Pitcher	2825 Airview Boulevard			Kalamazoo	MI	49002
Attorney General of California	Attorney General of California	Attn Bankruptcy Department	California Department of Justice	1300 "I" Street		Sacramento	CA	95814
Office of the Attorney General of the United States	Attorney General of the United States	U.S. Department of Justice	950 Pennsylvania Avenue, NW			Washington	DC	20530-0001
TOP 30	Axis Spine Llc	DD Mate	1812 W Burbank Blvd #5384			Burbank	CA	91506
TOP 30	Baxter Healthcare Corp	Yolieth Bazan Matamoros	17511 Armstrong Ave			Irvine	CA	92614
TOP 30	Boston Scientific Corp	Kathleen Homsab	300 Boston Scientific Way			Marlborough	MA	01752-1234
Counsel for Sodexo	Brown McGarry Nimeroff LLC	Jami B. Nimeroff	Two Penn Center, Suite 610	1500 John F. Kennedy Boulevard		Philadelphia	PA	19102
Counsel to Proposed DIP Lender	Bryan Cave Leighton Paisner LLP	Eric S. Prezant	161 North Clark Street, Suite 4300			Chicago	IL	60612
Counsel to Proposed DIP Lender	Bryan Cave Leighton Paisner LLP	Vanessa Sunshine and Sharon Weiss	120 Broadway, Suite 300			Santa Monica	CA	90401-2386
TOP 30	California Department Of Health Care Services	Tomas J. Aragon	1501 Capitol Avenue, Suite 4510			Sacramento	CA	95814
California Department of Health Care Services	California Department of Health Care Services	Jennifer Kent, Director	1501 Capitol Avenue, Suite 4510			Sacramento	CA	95814
California Department of Public Health	California Department of Public Health	Stephanie Spich	PO Box 997377 MS 0500			Sacramento	CA	95899-7377
California Secretary of State	California Secretary of State		1500 11th Street			Sacramento	CA	95814
California State Board of Pharmacy	California State Board of Pharmacy		1625 North Market Boulevard			Sacramento	CA	95834
California Statewide Communities Development Authority	California Statewide Communities Development Authority	Chair	1100 K Street, Suite 101			Sacramento	CA	95814
Center for Medicare and Medicaid Services	Center for Medicare and Medicaid Services	Steven Chickering, the Associate Regional Administrator	90 – 7th Street, Suite 5-300			San Francisco	CA	94103-6706
TOP 30	Cepheid Inc.	Susan Jose	904 E Caribbean Dr			Sunnyvale	CA	94089
TOP 30	Cloudwave	Loraine Sarno	100 Crowley Dr.			Marlborough	MA	01752
TOP 30	Constellation New Energy-Gas	Zachary Keczykecy	9400 Bunsen Parkway Suite 100			Louisville	KY	40220
Department of Health Care Services	Department of Health Care Services	Tanya Homman, Chief of Provider Enrollment Division	MS 4704, P.O. Box 997412			Sacramento	CA	95899-7412
Employment Development Dept.	Employment Development Dept.		722 Capitol Mall, MIC 92E			Sacramento	CA	95814
TOP 30	First Financial Holdings Llc	Ricardo Oseguera	750 The City Drive South, Suite 300			Orange	CA	92868
Counsel to Indenture Trustee	Greenberg Traurig, LLP	Colleen Murphy, Kevin Walsh	One International Place, Suite 2000			Boston	MA	02110
Hanmi Bank	Hanmi Bank	Specialty Lending	2010 Main St. Suite 590			Irvine	CA	92614
Hanmi Bank	Hanmi Bank	Specialty Lending	1920 Main St. Suite 1140	Attn Ben Sottile		Irvine	CA	92614
Hanmi Bank	Hanmi Bank		10180 Reseda Blvd			Northridge	CA	91324
Proposed DIP Lender	Hilco Real Estate	Attn Gary C. Epstein, Ryan Lawlor, Neil Aaronson and Robert Lubin	5 Revere Drive, Suite 206			Northbrook	IL	60062
TOP 30	Huntington Technology Finance	Brent McQueen	2285 Franklin Road			Bloomfield Hills	MI	48302
IRS	Internal Revenue Service	Attn Susanne Larson	31 Hopkins Plz Rm 1150			Baltimore	MD	21201

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
IRS	Internal Revenue Service	Centralized Insolvency Operation	P.O. Box 7346			Philadelphia	PA	19101-7346
IRS	Internal Revenue Service	Centralized Insolvency Operation	2970 Market St			Philadelphia	PA	19104
IRS	Internal Revenue Service		300 North Los Angeles Street			Los Angeles	CA	90012
IRS	Internal Revenue Service		600 Arch Street			Philadelphia	PA	19101
TOP 30	Keenan and Associates	Raquel Wallace	2355 Crenshaw Blvd., Suite 200			Torrance	CA	90501
Counsel for Hanmi Bank	Law Office of Nathan A. Schultz, P.C.	Nathan A. Schultz, Esq.	10621 Craig Road			Traverse City	MI	49686
TOP 30	Medical Information Technology, Inc	Goretti Medeiros	7 Blue Hill River Road			Canton	MA	02021
TOP 30	Medical Solutions LLC	Ruben Ramirez	1010 N 102Nd St Suite 300			Omaha	NE	68114
TOP 30	Medline Industries Inc	Brent Fogel	Three Lakes Drive			Northfield	IL	60093
TOP 30	Medstar Anesthesia Services Inc	Robert Resnick	9251 Wedgewood St			Temple City	CA	91780
National Association of Attorneys General	National Association of Attorneys General		1850 M Street NW, 12th Floor			Washington	DC	20036
TOP 30	Nixon Peabody LLP	Jennifer O'Neal	1300 Clinton Square			Rochester	NY	14604
TOP 30	Noridian Healthcare Solutions, LLC	Theresa Pachel	900 42nd Street S			Fargo	ND	58103
TOP 30	Office of Inspector General (OIG)	Nicole Caucci	405 South Main Street Suite 350			Salt Lake City	UT	84111
Office of the Attorney General of California	Office of the Attorney General of California	Consumer Law Section	Attn Bankruptcy Notices	455 Golden Gate Ave., Suite 11000		San Francisco	CA	94102
Deputy General Counsel to California Department of Health Care Services	Office of the California Attorney General	Department of Justice	Kenneth K. Wang	300 South Spring Street, Suite 1702		Los Angeles	CA	90013
Office of the CA Attorney General	Office of the California Attorney General	Department of Justice	Jennifer Kim	300 South Spring Street, Floor 9		Los Angeles	CA	90013
Counsel to Hanmi Bank	Orrick, Herrington & Sutcliffe LLP	Brendan LaFountain	400 Capitol Hall			Sacramento	CA	95814-4497
TOP 30	Outset Medical Inc	Andy Rabon	3052 Orchard Drive			San Jose	CA	95134
TOP 30	Philips Healthcare	Jose Rivera	222 Jacobs Street			Cambridge	MA	02141
TOP 30	Private Attorney General Act (PAGA)	Jarrold Salinas	1411 North Batavia Street #105			Orange	CA	92867
Counsel for California Statewide Communities Development Corporation dba CSDA	Richards, Watson & Gershon	Stephen D. Lee	350 South Grand Avenue, 37th Floor			Los Angeles	CA	90071
TOP 30	Shiftwise	Jennifer Folds	200 SW Market Street Suite 700			Portland	OR	97201
Counsel to Hanmi Bank	Shulman Hodges & Bastian LLP	Michael J. Petersen	100 Spectrum Center Drive, Suite 600			Irvine	CA	92614
TOP 30	Sodexo Inc & Affiliates	Luis Lunalluna	9801 Washingtonian Boulevard			Gaithersburg	MD	20878
State of California Employment Development Department	State of California Employment Development Department	Bankruptcy Group MIC 92E	P. O. Box 826880			Sacramento	CA	94280-0001
TOP 30	Stryker Endoscopy	Joe Gallinatti	5900 Optical Ct			San Jose	CA	95138
TOP 30	Stryker Instruments	Donovan Reiley	4100 E. Milham Road			Kalamazoo	MI	49001
TOP 30	Stryker Orthopedics	Trent Zaks	325 Corporate Drive			Mahwah	NJ	07430
U.S. Department of Health & Human Services	U.S. Department of Health & Human Services	Alex M. Azar II, Secretary	200 Independence Avenue, S.W.			Washington	DC	20201
U.S. Department of Health and Human Services	U.S. Department of Health and Human Services	Angela M. Belgrove, Assistant Regional Counsel	Office of the General Counsel, Region IX	90 7th Street, Suite 4-500		San Francisco	CA	94103-6705
United States Attorney Civil Process Clerk	United States Attorney's Office		Federal Building	Room 7516	300 North Los Angeles Street	Los Angeles	CA	90012
United States Attorney's Office	United States Attorneys Office	Central District of California	312 North Spring Street	Suite 1200		Los Angeles	CA	90012
United States Attorney's Office	United States Attorneys Office	Northern District of California	150 Almaden Boulevard	Suite 900		San Jose	CA	95113
United States Attorney General	United States Department of Justice	Ben Franklin Station	P. O. Box 683			Washington	DC	20044
Office of the United States Trustee	United States Trustee	Peter C. Anderson	Office of the UST/DOJ	915 Wilshire Blvd., Suite 1850		Los Angeles	CA	90017

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Indenture Trustee	US Bank NA	Christopher H. Gehman Vice President, Global Corporate Trust Services	James Center Three	1051 East Cary Street, 6th Floor		Richmond	VA	23219
Indenture Trustee	US Bank NA		Po Box 70870			St Paul	MN	55170-9690
Chambers	USBC Central District of California		Edward R. Roybal Federal Building and U.S. Courthouse	255 East Temple Street, Suite 1560		Los Angeles	CA	90012
Affected Party	VALENCIA & CYWINSKA, ALC	Mark Joseph Valencia, Esq.	355 S. Grand Ave, Suite 2450			Los Angeles	CA	90071



## **Exhibit C**

Description	CreditorName	Email
TOP 30	Abbott Laboratories Inc	nathan.scott@abbott.com
TOP 30	Advantis Medical Staffing	goldman@advantismed.com
Counsel for Advantis Medical Staffing	Akerman LLP	evelina.gentry@akerman.com
TOP 30	Alhambra Hospital Medical Center	terrychu@alhambrahospital.com
Attorneys for California Statewide Communities Development Authority	Allen Matkins Leck Gamble Mallory & Natsis LLP	driley@allenmatkins.com
TOP 30	Allied Universal Security Services	moises.rodriguez@aus.com
TOP 30	Arthrex, Inc	Carla.Pitcher@arthrex.com
TOP 30	Axis Spine Llc	dmate@axispineco.com
TOP 30	Baxter Healthcare Corp	yolieth_bazan@baxter.com
TOP 30	Boston Scientific Corp	Kathleen.homsab@bsci.com
Counsel for Sodexo	Brown McGarry Nimeroff LLC	jnimeroff@bmnlawyers.com
Counsel to Proposed DIP Lender	Bryan Cave Leighton Paisner LLP	eric.prezant@bclplaw.com
Counsel to Proposed DIP Lender	Bryan Cave Leighton Paisner LLP	vanessa.sunshine@bclplaw.com; sharon.weiss@bclplaw.com
California Department of Public Health	California Department of Public Health	stephanie.spich@cdph.ca.gov
TOP 30	Cepheid Inc.	susan.jose@cepheid.com
TOP 30	Cloudwave	lsarno@insightinvestments.com
TOP 30	Constellation New Energy-Gas	ZacharyKecyzkecy@spectrum-nrg.com
TOP 30	First Financial Holdings Llc	roseguera@ffequipmentleasing.com
Counsel to Indenture Trustee	Greenberg Traurig, LLP	Colleen.Murphy@gtlaw.com; Kevin.Walsh@gtlaw.com
Proposed DIP Lender	Hilco Real Estate	gepstein@hilcoglobal.com; rlawlor@hilcoglobal.com; NAaronson@hilcoglobal.com; RLubin@hilcoglobal.com
TOP 30	Huntington Technology Finance	brent.a.mcqueen@huntington.com
TOP 30	Keenan and Associates	rwallace@keenana.com
Counsel for Hanmi Bank	Law Office of Nathan A. Schultz, P.C.	nschultzesq@gmail.com
VALENCIA & CYWINSKA, ALC	Mark Joseph Valencia, Esq.	mvalencia@vclitigation.com
TOP 30	Medical Information Technology, Inc	gmedeiros@meditech.com
TOP 30	Medical Solutions LLC	info@medicalsolutions.com
TOP 30	Medline Industries Inc	bfogel@medline.com
TOP 30	Medstar Anesthesia Services Inc	robert.amedinc@gmail.com
National Association of Attorneys General	National Association of Attorneys General	support@naag.org
TOP 30	Nixon Peabody Llp	joneal@nixonpeabody.com
TOP 30	Noridian Healthcare Solutions, LLC	JE-ERS@noridian.com
Office of the Attorney General of California	Office of the Attorney General of California	Scott.Chan@doj.ca.gov
Deputy General Counsel to California Department of Health Care Services	Office of the California Attorney General	Kenneth.Wang@doj.ca.gov
TOP 30	Outset Medical Inc	arabon@outmedical.com
TOP 30	Philips Healthcare	jose.rivera@philips.com
TOP 30	Private Attorney General Act (PAGA)	jarrod@phoenixclassaction.com
Counsel for California Statewide Communities Development Corporation dba CSDA	Richards, Watson & Gershon	slee@rwglaw.com
TOP 30	Shiftwise	jennifer.folds@medefis.com
TOP 30	Sodexo Inc & Affiliates	LuisLunalluna@beverly.org
TOP 30	Stryker Endoscopy	joe.gallinati@stryker.com
TOP 30	Stryker Instruments	donovan.reiley@stryker.com
TOP 30	Stryker Orthopedics	TrentZaks@stryker.com

Description	CreditorName	Email
Office of the United States Trustee	United States Trustee	hatty.yip@usdoj.gov; Michael.Jones4@usdoj.gov
Indenture Trustee	US Bank NA	christopher.gehman@usbank.com